IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Crl.MC.No. 702 of 2005()

ST.6/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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PETITIONER:

ADV.T.U.SHAIK ABDULLAH,
S/O.V.C.UMMER, THUPPANATTU PARAMBIL HOUSE,
IST MILE, MANNUR, PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KONGAD POLICE STATION.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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Crl. M.C. No.702 of 2005

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Dated this the 8th day of October, 2007.

ORDER

The petitioner/third accused in S.T. 6/2004 on the file of the Judicial First Class Magistrate's Court-II, Palakkad is an Advocate practising at Palakkad. Final report in the aforesaid case has been submitted by the Sub Inspector of Kongad Police Station alleging that the accused in the case (three in numbers) have committed offences punishable under Section 182, 120(b) and 109 IPC, inter alia on the allegation that a complaint was falsely filed before the Judicial First Class Magistrate's Court-II, Palakkad by the first accused through the petitioner/third accused complaining that the first accused sustained injuries in an accident while he was a pillion rider on motorcycle bearing registration No.KL/9H-3732, belonging to and driven by the second accused, with a view to claim compensation for motor accident when actually the first accused who was a worker in a motor workshop sustained injuries because of his negligence while he was riding a TVS-50 motorcycle bearing registration No.KL/9C-3500 which had been brought to the said workshop for effecting repairs and on the basis of the false complaint so filed and forwarded for investigation under Section 156

(3) of Cr. P.C., Crime No.200/2002 was registered at the Kongad Police Station under Sections 279 and 338 of IPC against the second accused and the Sub Inspector of Police filed final report against the 2nd accused and the court had taken the case on file as C.C. 666/2003 and on further investigation it was revealed that the said information furnished in the complaint filed by the first accused through the petitioner-third accused was false.

2. It is contended by the learned counsel for the petitioner/3rd accused that where the complaint was filed before the Magistrate making false allegation so as to claim compensation for motor accident, the counsel who represents the party has no role in the matter and proceedings if any will lie only as against the complainant who has foisted a false case by giving wrong information and not against the petitioner who was the counsel appearing for the party. It is further contended that going by Section 195 (1)(a)(i) of the Code of Criminal Procedure, the learned Magistrate could not have taken cognizance of the offence alleged to have been committed which is punishable also under Section 182 of IPC, as an offence punishable attracting Section 182 of the IPC could not have been entertained except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively

subordinate and not by the successor in office of the Sub Inspector who has registered the earlier crime namely, Crime No.200/2002 for offence under Sections 279 and 332 of IPC.

3. According to the Public Prosecutor, the public servant referred to in Section 195(1)(a)(i) in the instant case is the Sub Inspector of Police of Kongad Police Station and it cannot be said that when one Police Officer is transferred, the successor who takes charge will not come within the purview of the public servant concerned, especially when the officer is acting in his capacity as Station House Officer and that adopting a different meaning for the said provision would lead to difficult situations when the officer who registers the case, retires, dies or is transferred to distant places. The argument of the Public Prosecutor is sound and has to be accepted. There is no merit therefore in the second contention advanced by learned counsel for the petitioner.

4. All the same the fact remains that when a false complaint is filed before a Magistrate and the complainant is represented by a lawyer, it is only the complainant and not the lawyer who has to face the consequences of such a false complaint having been filed. The third accused lawyer filed complaint before the learned Magistrate on behalf of the first accused on the basis of which was Crime No.200/2002 registered against the second

accused for offences under Sections 279 and 338 IPC, consequent on forwarding of the complaint filed by the first accused to the Kongad Police Station under Section 156(3) of Cr.P.C. by the Magistrate. The petitioner/third accused who appeared for the complainant in the said case cannot be charge sheeted for offence either under Section 182 of the IPC or for offence under Section 120(b) or 109 of IPC.

In the result, allowing this Criminal M.C., I quash the proceedings as against the petitioner in S.T. No.6/2004 on the file of the Judicial First Class Magistrate's Court-II, Palakkad.

K.P.BALACHANDRAN
Judge

pms